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Federal Communications Commission
Office of the Secretary

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

| | | |
|---------------------------------|---|------------------------|
| In re Applications of |) | |
| | (| |
| SOUTHWEST EDUCATIONAL MEDIA |) | |
| FOUNDATION OF TEXAS, INC. | (| |
| |) | |
| Midland, Texas, New FM Station | (| File No. BPED-900629MM |
| Lubbock, Texas, New FM Station |) | File No. BPED-900629MK |
| | (| |
| For Construction Permit |) | |
| | (| |
| BAKCOR BROADCASTING, INC., |) | |
| Debtor c/o DENNIS ELAM, Trustee | (| |
| |) | |
| KNFM(FM), Midland, Texas | (| File No. BRH-900330WF |
| KKIK(FM), Lubbock, Texas |) | File No. BRH-900330VV |
| | (| |
| For Renewal of License |) | |

To: Chief, Mass Media Bureau

OPPOSITION TO JOINT REQUEST FOR APPROVAL
OF SETTLEMENT AGREEMENT

Williams Broadcasting Group (Williams) herewith opposes the Joint Request For Approval of Settlement Agreement filed by Southwest Educational Media Foundation of Texas, Inc. (SEMFOT) and Bakcor Broadcasting, Inc., Debtor c/o Dennis Elam, Trustee on July 12, 1991. Williams is the licensee of Station KJAK(FM), Slaton, Texas. Slaton and Lubbock, Texas are about twelve miles apart and KJAK, a Class C-1 station, serves the Lubbock market as does Station KKIK(FM), Lubbock, Texas. So too, would SEMFOT's above-captioned proposed

Lubbock facility, File No. BPED-9000629MK.¹ Accordingly, Williams has standing to challenge at least so much of the Joint Request as relates to the renewal of license applications of Stations KXTQ² and KKI-K, Lubbock and SEMFOT's Lubbock application, File No. BPED-900629MK, *FCC v. Sanders Brothers Radio Station*, 309 U. S. 470 (1940); *Scripps-Howard Radio, Inc. v. FCC*, 316 U. S. 4 (1942), and, for that matter, to intervene, "the standards being the same in both instances." *Radio Lares*, 40 RR 2d 35, 37 (1977), citing, *St. Louis Telecast, Inc.*, 43 FCC 2618, 10 RR 1185 (1954). SEMFOT's Midland, Texas application, captioned above, appeared on cut-off by Public Notice, Report No. NA-144 (March 28, 1991). SEMFOT's Slaton application (see footnote 1) was accepted for filing by Public Notice, Report No. NA-150, (August 26, 1991) and petitions to deny are due September 30, 1991. SEMFOT's Lubbock application has not yet been accepted for filing and, accordingly, petitions to deny are not yet calendared.

The Joint Request contemplates, inter alia, dismissal of the KKI-K renewal application and grant of the competing SEMFOT Lubbock application and withdrawal of a lengthy Petition To

¹ As would its proposed facility at Slaton, Texas, File No. BPH-900629 ML, which is mutually exclusive with Williams' application for renewal of license of Station KJAK, File No. BRH-900312 UC).

² Station KXTQ is not captioned but is involved. See Agreement attached to Joint Request.

Dismiss Or Deny filed May 1, 1991 (May 1, 1991 Petition) by Bakcor Broadcasting, Inc. and Bakke Communications, Inc. attacking SEMFOT's basic qualifications, filed in connection with SEMFOT's above-captioned Midland, Texas application, File No. BPED-900629MM. Most of the various charges here relevant against SEMFOT, its lead principal T. Kent Atkins (Atkins) and/or its affiliated Caprock Educational Broadcasting Foundation (Caprock), have been assembled in the May 1, 1991 Petition. That Petition, in turn, includes as Exhibit 3 thereto Williams' Complaint against Caprock's Station KAMY filed April 13, 1989 and Williams' petition to deny an earlier KAMY application for modification of construction permit, BMPED-880328MM filed April 25, 1989, Caprock's opposition thereto at Exhibit No. 4 wherein it "acknowledges that it commenced operations at the site proposed in its pending application and pleads ignorance," filed May 9, 1989, Williams' Reply to Opposition filed May 31, 1989 which points out the same violation in Amarillo, Texas (Exhibit 5 to May 1, 1991 Petition) and at Exhibit 6, Caprock's Consolidated Opposition to Petition to Deny and Informal Objection admitting its transgressions. The May 1, 1991 Petition is herein incorporated by reference, as are all of the exhibits attached to it. A copy of the May 1, 1991 Petition's cover, its table of contents and its summary is Attachment 1 hereto. Attachment 2 is another Williams Complaint, dated October 16,

1990. Of primary significance with respect to that Complaint is its reference to an FCC Field Investigation report³ into the various Atkins endeavors, the contents of which should be enough to prevent any new Atkins/Caprock/SEMFOT authorizations.⁴

Williams notes that pursuant to the agreement attached to the Joint Request, Bakcor is contractually required to seek withdrawal of its May 1, 1991 Petition. Even if that has or does occur, it is the Commission's statutory obligation to examine the underlying qualifications of any applicant. Section 308(b) of the Communication Act of 1934, as amended, 47 U. S. C. §308(b) requires the submission of facts regarding the "citizenship, character, and financial, technical and other qualifications of the applicant to operate the station...." See too, Sections 307(a) and 309(a). Whatever the private interest of Bakcor in selling out to Caprock/SEMFOT/Atkins, it is the public interest that is controlling.⁵

Clearly the maneuvers contemplated by the Joint Request are equivalent to one or more applications for assignment of license. "The parties will be executing additional documents

³ Control No. C5-553, Tracking No. 89-I-2138.

⁴ Williams has never seen this report or its contents.

⁵ "Private litigants have standing only as representatives of the public interest." *Scripps-Howard Radio Inc. v. FCC*, 316 U. S. 4, 14 (1942).

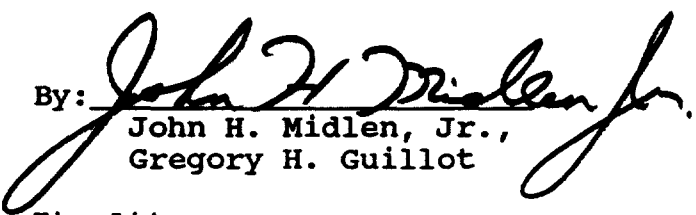
relating to the method of payment and transfer of station assets." Joint Request at 2, note 1. The authority cited by the proponents, *RKO General, Inc., (WGMS)*, 3 FCC Rcd 5262 (1988), stands not for the principle that the renewal dismissal/construction permit grant machination is in the public interest and therefore grantable, but for the opposite, i.e., an applicant such as SEMFOT whose qualifications are under attack is hardly an appropriate recipient of a construction permit for anything, much less an existing facility. This is not a situation where "the public interest is better served . . . by ending . . . uniquely protracted litigation -- which threatens to continue for many years to come . . . " in favor of "an unquestionably qualified licensee. . . ." *Id.* at 5263.

For the foregoing reasons, the Joint Request For Approval Of Settlement Agreement filed July 12, 1991 by SEMFOT and Bakcor Broadcasting, Inc., Debtor, c/o Dennis Elam, Trustee should be disapproved.

Respectfully submitted,

WILLIAMS BROADCASTING GROUP

By:


John H. Midlen, Jr.,
Gregory H. Guillot

Its Attorneys

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September 6, 1991

S. Kantor

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.
Midland, Texas

)
) File No. BPED-900629MM
)
)
)

To: Chief, Mass Media Bureau

PETITION TO DISMISS OR DENY

BAKCOR BROADCASTING, INC.
BAKKE COMMUNICATIONS, INC.
Debtors-In-Possession

Howard M. Weiss
Lawrence Roberts
Linda J. Eckard

MULLIN, RHYNE, EMMONS AND TOPEL, P.C.
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Washington, D.C. 20036
(202) 659-4700

Their Counsel

May 1, 1991



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SUMMARY

Bakke Communications, Inc., Debtor-in-Possession, and Bakcor Broadcasting, Inc., Debtor-in-Possession, the licensee of Station KNFM(FM), Midland, Texas ("Bakcor"), petitions to dismiss or deny the application filed by Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT"), for these facilities.

SEMFOT's application is the latest in a series of "strike" applications and pleadings inspired by C.K. Adams, an associate and client of T. Kent Atkins, SEMFOT's President and dominant principal. Adams and Atkins are engaged in a conspiracy to exploit Commission processes in order to sabotage a plan of liquidation that was approved by the United States Bankruptcy Court for the Western District of Texas and the District Court. In order to protect the integrity of the Commission processes, SEMFOT's application should therefore be dismissed, or, at the very least, designated on an abuse of process issue.

Atkins is also not qualified to be a Commission licensee because three of his existing stations have been guilty of flagrant premature and/or unauthorized construction. Allegations made by a competitor concerning two of these stations licensed to Caprock Educational Broadcasting Foundation, controlled by Atkins and his wife, have led to a comprehensive

ongoing Commission investigation. The investigation, in turn, has triggered holds on Atkins renewal modification and assignment applications and an attempt by Atkins and his wife to withdraw from Caprock. Bakcor raises new charges herein of unauthorized commencement of operations by yet another Atkins station.

A further ground for denial of SEMFOT's application is its violations of Sections 1.65 and 73.3514 of the rules. SEMFOT failed to report the controversy surrounding the Caprock stations, as well as numerous pending and dismissed applications filed by Atkins and his companies. Motives for concealment include, inter alia, the sheer number of applications, raising a financial issue, and the fact that such an issue was sought against SEMFOT but never resolved in a Waco, Texas, comparative proceeding not disclosed in the instant application.

SEMFOT's financial qualifications are called into question by the huge number of proposals to construct and operate broadcast facilities that Atkins' companies have pending. Under controlling Commission authorities, financial inquiry is warranted before a bankrupt renewal applicant is compelled to endure a comparative proceeding with an abusive challenger.

SEMFOT lacks reasonable assurance of its proposed site. In contravention of Commission processing rules, it has provided no evidence of such assurance and its specification of Bakcor's site without permission contravenes the Commission's Policy Statement on Comparative Renewals. Further, at the time SEMFOT filed its application, it had not even contacted an agent of the site owner.

Finally, SEMFOT has not demonstrated its eligibility to be treated as a non-commercial applicant, exempt from application fees and the multiple ownership rules. Its vague, conclusory "showing" falls short of the detailed educational proposal required by Commission rules, policy guidelines, and case law. The sanction should be dismissal of the application for failure to meet commercial application standards. Alternatively, an educational qualifications issue with fatal consequences for unfavorable resolution should be specified against SEMFOT.

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OCT 16 1990

Federal Communications Commission
Office of the Secretary

October 16, 1990

BY HAND

FILE COPY

Ms. Edythe Wise, Chief
Complaints and Investigations Branch
Room 8210
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Re: COMPLAINT
Station KAMY(FM), Lubbock, Texas
Caprock Educational Broadcasting Foundation
File No. BMPED-890726IF
Our File No. 98

Dear Ms. Wise:

Williams Broadcasting Group (Williams), licensee of Station KJAK(FM), Slaton, Texas, respectfully requests that you close down the current operation of Station KAMY(FM), Lubbock, Texas, operated by Caprock Educational Broadcasting Foundation (Caprock) on Channel 211A, pending resolution of the matters of the multiple Communications Act and Commission's Rules violations committed by the permittee which already are under investigation by your department.

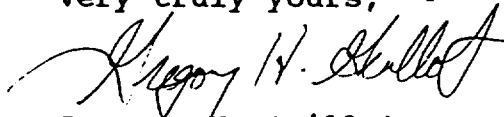
KAMY ceased operations voluntarily on or about April 20, 1989, following a complaint filed with your offices by Williams on April 13, 1989. See Letter from Dennis Williams, 8920-AED, dated April 25, 1989. As Dennis Williams' April 25, 1989 letter reflects, at that time KAMY admittedly was operating illegally from an unauthorized transmitter site (the site proposed in application BMPED-880328MM), rather than the site authorized in construction permit file number BPED-840626IE. Following that time, additional complaints (as well as petitions to deny and petitions for reconsideration) have been filed against Caprock for unauthorized operations and other violations of the Communications Act and Commission's Rules in connection with various stations licensed to that

Ms. Edythe Wise
October 16, 1990
Page 2

entity, as well as other entities controlled by T. Kent Atkins, Caprock's major principal. In addition, field investigations have been conducted regarding Mr. Atkin's various stations, and Williams understands, violations have been noted with respect to 9 of his affiliated stations in a report exceeding 60 pages in length. However, the Commission has not yet taken any action with respect to any of the noted violations.

Subsequently, Caprock replaced its original modification application for KAMY with an application for minor modification of construction permit BMPED-8907126IF, which, although not served upon Williams, was granted by the Commission. See File Nos. 831229AD, BPED-840626IE and BMPED-900724JK. Williams has filed a *Petition for Reconsideration* of the Commission's grant of that application which remains pending. In the meantime, however, KAMY has resumed full operations. By this letter, Williams reiterates the substance of its previous complaints, urges that notice be taken of the information contained in the FCC's field investigation report (Control No. C5-553, Tracking No. 89-I-2138), and requests that KAMY be shut down pending Commission determination regarding whether Caprock and Atkins' related entities are qualified, in light of the misconduct referenced herein, to remain a Commission licensee. If the Commission will not take this action immediately, Williams respectfully requests that the KAMY facilities be reinspected forthwith, to insure that the problems noted in the FCC's field report and Williams' various filings have been corrected.

Very truly yours,



Gregory H. Guillot
Counsel for
Williams Broadcasting Group

cc: James L. Oyster, Esquire
Amy Zoslov, Esquire

CERTIFICATE OF SERVICE

I, Antoinette M. Jackson, do hereby certify that I have sent via First Class U.S. Mail, postage prepaid, today, September 6, 1991, a copy of the foregoing **OPPOSITION TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT** to the following:

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